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November 10, 2008

By Federal Express

California Supreme Court
350 McAllister Street
San Francisco, California 94102

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CLERK SUPREME COURT

Re: *Strauss, et al. v. Horton, et al.*
City and County of San Francisco, et al. v. Horton, et al.
Tyler, et al. v. State of California, et al.
California Supreme Court Case Nos. S168047, S168078, S168066

To The Honorable Chief Justice and Associate Justices:

The Beverly Hills Bar Association, joined by California Women Lawyers, amici in the *In re Marriage Cases*, respectfully urge that this Court exercise original jurisdiction over the above-referenced cases because they present questions of overwhelming and immediate importance to every California citizen. The sooner these questions are resolved, the better for all Californians.

On May 15, 2008, this Court held that sexual orientation is a constitutionally protected classification and that same-sex couples have a fundamental right to marry under the California Constitution. Now, five months later, a bare majority of our populace has passed an initiative (Proposition 8) that purports to eliminate that right, declaring that same-sex marriages are no longer valid or recognized in California.

The question presented is straightforward: Does California law allow one group of citizens, by majority vote on an initiative, to deny other citizens a fundamental constitutional right? This issue begs for definitive resolution.

The impact on same-sex couples is obvious and direct. Proposition 8 purports to invalidate and preclude recognition of existing marriages and to render future marriages illegal. But, the impact of Proposition 8 does not stop there. If, under Proposition 8, a majority vote can lawfully strip a minority of a fundamental constitutional right, then no minority will ever be safe from being stripped of other California constitutional rights by majority vote.

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The disruptive impact of Proposition 8 is immediate and enormous. It disrupts the lives and relationships of thousands of California citizens. Last Monday, married same-sex couples took comfort in the fact their lives and families were secure in marriage, and unmarried same-sex partners could legitimately plan on gaining that security. The next day all security was snatched away. A bare majority of our citizens decided that same-sex couples could no longer enjoy a fundamental constitutional right simply because of their sexual orientation. Aside from the unseemliness of the message, the vote has created intolerable disruption and uncertainty. Same-sex couples need—and deserve—to be able to plan their lives in a meaningful and orderly fashion, and they need to do be able to do it now, not months or years from now.

While this alone should compel immediate intervention by this Court, there is more. The implications of upholding Proposition 8 potentially affect every California citizen. If a majority can lawfully vote to eliminate a fundamental California constitutional right, then where will it stop? Could a bare majority decide, as a matter of California constitutional law, that people of different races, national origins, or religions may not marry or may no longer enjoy some other right protected by the California constitution? The implications are potentially profound and frightening. They go to the very essence of what our constitutional guarantees mean and what our constitutional government is all about.

Given the magnitude of the issue, the time to act is now. Delay in the circumstances presented here would be intolerable. If a fundamental constitutional right is denied for even a moment, it is a moment too long. We respectfully ask this Court elect to hear these now and to set the matter for hearing at the earliest practicable date.

Respectfully submitted,

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By:


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cc: See Attached Proof of Service

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On November 10, 2008, I served the foregoing document described as:

(AMICUS LETTER RE *IN RE MARRIAGE CASES*) on the parties in this action by serving:


**** SEE ATTACHED SERVICE LIST ****

(✓✓) **By Envelope** - by placing () the original (✓✓) a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

(✓✓) **By Mail:** As follows: I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on November 10, 2008, at Los Angeles, California.

(✓✓) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



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California Supreme Court Case No. S168047

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Tyler, et al. v. The State of California, et al.
California Supreme Court Case No. S168066

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